

Government Accountability Office

§ 28.18

(2) If neither the MSPB nor the EEOC agrees to such a procedure, an appointment of an arbitrator will be sought from the FMCS.

(3) In any event, whoever is so appointed shall possess all of the powers and authority possessed by the Board in employee cases. The decision of the administrative law judge, administrative judge or arbitrator shall be a final decision of the Board. The procedure for judicial review of the decision shall be the same as that described in § 28.90.

(d) Any employee of the Board (other than the General Counsel) who believes that he or she is aggrieved by any personnel matter that is not reviewable by the Board under 31 U.S.C. 753(a) may file a grievance as follows:

(1) *Informal Step.* The employee must discuss the complained of incident with his or her supervisor as soon as possible after the complained of incident.

(2) *Step 1.* If the supervisor is unable to resolve the matter informally to the satisfaction of the employee, then the employee may file a formal grievance with the supervisor. The formal grievance must be filed by the employee with the supervisor within 20 days after the complained of incident. The supervisor must respond to the employee in writing within 10 days.

(3) *Step 2.* (i) If the employee is not satisfied with the supervisor's response, the employee has 10 days in which to appeal to the Chair. In this appeal, the employee must forward to the Chair the formal grievance, the supervisor's response and a brief statement from the employee explaining why the supervisor's response is not satisfactory.

(ii) The Chair or another member designated by the Chair, shall meet with the employee and discuss the matter of concern within 10 days after service of the step 2 appeal. The Chair or designee shall issue a written resolution of the grievance.

(4) *Step 3.* Within 10 days after service of the Chair's resolution or within 60 days after initiating step 2, whichever occurs first, the employee may request that the full Board review the griev-

ance. The decision of the full Board is the final decision in the matter.

[58 FR 61992, Nov. 23, 1993, as amended at 59 FR 59106, Nov. 16, 1994; 61 FR 36810, July 15, 1996; 68 FR 69299, Dec. 12, 2003]

§ 28.18 Filing a petition with the Board.

(a) *Who may file.* Any person who is claiming to be affected adversely by GAO action or inaction that is within the Board's jurisdiction under subchapter IV of chapter 7 of title 31, United States Code, or who is alleging that GAO or a labor organization engaged or is engaging in an unfair labor practice, may file a petition if one of the following is met:

(1) The person has received a Right to Petition Letter from the Board's Office of General Counsel; or

(2) At least 180 days have elapsed from the filing of the charge with the Board's Office of General Counsel and that Office has not issued a Right to Petition Letter; or

(3) The person was separated due to a Reduction in Force and chooses to file a petition directly with the Board, without first filing with the Board's Office of General Counsel, as provided in § 28.13.

(b) *When to file.* (1) Petitions filed pursuant to paragraph (a)(1) of this section must be filed within 30 days after receipt by the charging party of the Right to Petition Letter from the Board's Office of General Counsel.

(2) Petitions filed pursuant to paragraph (a)(2) of this section may be filed at any time after 180 days have elapsed from the filing of the charge with the Board's Office of General Counsel, provided that that Office has not issued a Right to Petition Letter concerning the charge.

(3) Petitions filed pursuant to paragraph (a)(3) of this section must be filed within 30 days after the effective date of the separation due to a Reduction in Force.

(c) *How to file.* (1) A petition may be filed by hand delivery at the office of the Board, Suite 560, Union Center Plaza II, 820 First Street NE., Washington, DC 20002. It must be received by 4 p.m., Monday through Friday, on the date that it is filed.

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(2) A petition may be filed by mail addressed to the Personnel Appeals Board, GAO, Suite 560, Union Center Plaza II, 441 G Street NW., Washington, DC 20548 or Personnel Appeals Board, GAO, Suite 560, Union Center Plaza II, 820 First Street NE., Washington, DC 20002. When filed by mail, the postmark shall be the date of filing for all submissions to the Board.

(d) *What to file.* The petition shall include the following information:

(1) Name of the petitioner or a clear description of the group or class of persons on whose behalf the petition is being filed;

(2) The names and titles of persons, if any, responsible for actions the petitioner wishes to have the Board review;

(3) The actions being complained about, including dates, reasons given and internal appeals taken;

(4) Petitioner's reasons for believing the actions to be improper;

(5) Remedies sought by the petitioner;

(6) Name and address of the representative, if any, who will act for the petitioner in any further stages of the matter; and

(7) Signature of the petitioner or petitioner's representative.

(e) *Failure to raise a claim or defense.* Failure to raise a claim or defense in the petition shall not bar its submission later unless to do so would prejudice the rights of the other parties or unduly delay the proceedings.

(f) *Non-EEO class actions.* One or more persons may file a petition as representatives of a class in any matter within the Board's jurisdiction. For the purpose of determining whether it is appropriate to treat a petition as a class action, the administrative judge will be guided, but not controlled, by the applicable provisions of the Federal Rules of Civil Procedure. See § 28.97 for EEO class actions.

[58 FR 61992, Nov. 23, 1993, as amended at 59 FR 59106, Nov. 16, 1994; 61 FR 9090, Mar. 7, 1996; 61 FR 36810, July 15, 1996; 65 FR 80280, Dec. 21, 2000; 68 FR 69300, Dec. 12, 2003]

§ 28.19 Content of response by charged party.

(a) Within 20 days after service of a copy of a petition, the GAO or other

charged party shall file a response containing at least the following:

(1) A statement of the position of the charged party on each allegation set forth therein, including admissions, denials or explanations. If the petition contains numbered paragraphs, the responses should reference the paragraph numbers. If the petition does not contain numbered paragraphs, the responses should quote or otherwise clearly identify the specific allegations of the petition.

(2) Any other defenses to the petition.

(3) Designation of, and signature by, the representative authorized to act for the charged party in the matter.

(b) Failure to raise a claim or defense in the response shall not bar its submission later unless to do so would prejudice the rights of the other parties or unduly delay the proceedings.

[58 FR 61992, Nov. 23, 1993, as amended at 68 FR 69300, Dec. 12, 2003]

§ 28.20 Number of Pleadings, service and response.

(a) *Number.* One original and seven copies of all pleadings (see definition in § 28.3) must be filed with the Board. However, when before a single administrative judge, one original and three copies will be adequate unless informed otherwise.

(b) *Service.* (1) The Board will serve copies of a petition upon the parties to the proceeding by mail and/or by facsimile. The Board will attach a service list indicating the names and addresses of the parties to the proceeding or their designated representatives. The Board will not serve copies of any pleadings, motions, or other submissions by the parties after the initial petition.

(2) The parties shall serve on each other one copy of all pleadings other than the initial petition. Service shall be made by mailing, by facsimile or by delivering personally a copy of the pleading to each party on the service list previously provided by the Board. Each pleading must be accompanied by a certificate of service specifying how and when service was made. It shall be the duty of all parties to notify the Board and one another in writing of